U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: MAY 12 2015 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal from that decision, as well as a subsequent motion to reconsider. The petitioner then filed a motion to reopen and reconsider. We granted the motion to reopen, dismissed the motion to reconsider, and affirmed the denial of the petition. The petitioner filed another motion to reopen and reconsider. We granted the motion to reopen, dismissed the motion to reconsider, and affirmed the denial of the petition. The matter is now before us on motion to reopen. We will grant the motion and affirm the denial of the petition.

The petitioner filed the Form I-140 petition on May 2, 2012, seeking classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an elementary special education teacher for . The petitioner has taught at Maryland since The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director denied the petition on October 27, 2012, having found that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States. We dismissed the petitioner's appeal on March 18, 2013; the petitioner's first motion on November 5, 2013; her second motion on April 21, 2014; and her third motion on August 26, 2014.

I. LAW

In re New York State Dep't of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18. In our prior decisions, we determined that the petitioner's evidence was not sufficient to demonstrate that she meets the second and third requirements specified in *NYSDOT*.

According to the regulation at 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110.

II. ANALYSIS

On motion, the petitioner submits copies of documents that she previously submitted and new evidence reflecting her updated teaching qualifications and local recognition. The new evidence qualifies the instant motion as a motion to reopen under 8 C.F.R. § 103.5(a)(2). In addition, the petitioner submits letters addressed to the Director of U.S. Citizenship and Immigration Services

(USCIS) and the Secretary of Homeland Security describing her difficult personal circumstances and requesting permission to continue working as a teacher in the United States. The regulations concerning the classes of individuals eligible for employment authorization are detailed in 8 C.F.R. § 274a.12. At issue is this matter is whether the petitioner has established that an exemption from the requirement of a job offer would be in the national interest of the United States.

In her previous motions, the petitioner requested to remain in the United States for various family-related reasons and because she was providing support for relatives in the Philippines who had been affected by an earthquake and a typhoon. As we explained in our prior decisions, the threshold for the waiver of the job offer requirement is the national interest, rather than the petitioner's personal circumstances.

The petitioner's motion includes the following new evidence:

1. An employment verification from dated September 16,
2. A certification from in the Philippines verifying the petitioner's employment and performance ratings as a high school faculty member from
3. A Maryland Educator Certificate valid from July June
4. Maryland State Education Association membership cards;
5. A membership card for the ;
6. Professional Identification Cards from the Republic of the Philippines, Professional Regulation Commission,
7. A certification stating that the petitioner is "a member of the that instills the value of recycling;
8. A certification from a charitable organization, recognizing the petitioner as "an active volunteer" (May);
9. A Certificate of Recognition for the petitioner's participation and contribution to "the year-round After School Program of (May ;
10. Cards from recognizing the petitioner as a benefactor of the ;
11. A Principal's Award Certificate from for being nominated as "Teacher of the Month" (January);
12. A Certificate of Recognition from for providing a Power Point Presentation on "Preventing High School Drop Outs" (March);
13. A Certificate of Presentation from the Principal of for providing a "presentation on Brief Constructed Response (BCR) writing" (December ;
14. A Certificate of Recognition from the Comprehensive Special Education Program (CSEP) Coordinator, for serving "as team leader for intermediate Special Education teachers of from ";
15. A Certificate of Appreciation from the principal of for "dedication to teaching" during American Education Week (November);
16. A "Certificate of Citizenship" from the Principal of honoring the petitioner as the "CSEP's Team Model Collaborator" (June ;

17. A "Certificate of Citizenship" from the Principal of for "CSEP Best Team Collaborators" (June ;
18. Two "Perfect Attendance" certificates from the Principal of for the school years; and
19. A Certificate of Achievement from the Principal of honoring the petitioner as the "CSEP Team Member of the Month" (December .

Occupational experience, professional certifications, membership in professional associations, and recognition for achievements are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(B), (C), (E), and (F), respectively. However, in this instance the petitioner is seeking a waiver of the job offer as a member of the professions holding an advanced degree. We note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. Pursuant to section 203(b)(2)(A) of the Act, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. *NYSDOT*, 22 I&N Dec. at 218, 222. Therefore, whether a given individual seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise. The national interest waiver is an additional benefit, separate from the classification sought, and therefore eligibility for the underlying classification does not demonstrate eligibility for the additional benefit of the waiver. Without evidence demonstrating that the petitioner's work has affected the field as a whole, employment in a beneficial occupation such as a teacher, therefore, does not by itself qualify the petitioner for the national interest waiver.

Particularly significant awards may serve as evidence of the petitioner's impact and influence on her field, but the petitioner has not demonstrated that the awards she received (items 8 – 19) have more than local, regional, or institutional significance. Furthermore, with regard to items 8 and 9, the petitioner earned those recognitions subsequent to filing the Form I-140, Immigrant Petition for Alien Worker (Form I-140), on May 2, 2012. Eligibility, however, must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, we cannot consider recognition received after May 2, 2012, as evidence to establish the petitioner's eligibility at the time of filing. Regardless, there is no documentary evidence showing that items 1 through 19 are indicative of the petitioner's influence on the field of education at the national level.

In addition, the petitioner submitted numerous certificates of participation and completion for training courses and seminars relating to her professional development that she attended from June 2012-Septmber 2014. The petitioner completed the aforementioned training subsequent to filing the Form I-140 petition on May 2, 2012. Again, eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, we cannot consider training completed after May 2, 2012, as evidence to establish the petitioner's eligibility at the time of filing. Regardless, while taking courses and attending seminars are ways to increase one's professional knowledge and to improve as a teacher, there is nothing inherent in these activities to establish eligibility for the national interest waiver.

III. CONCLUSION

The petitioner's motion to reopen does not include any new facts or other documentary evidence to overcome the grounds underlying our previous findings. The petitioner has not shown that the proposed benefits of her work are national in scope. In addition, the petitioner has not established that her past record of achievement is at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the individual must have "a past history of demonstrable achievement with some degree of influence on the field as a whole").

A plain reading of the statute indicates that engaging in a profession (such as teaching) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The petitioner's motion to reopen is granted. We affirm our prior decision for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The motion to reopen is granted, our decision of August 26, 2014, is affirmed, and the petition remains denied.